

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2805 of 1992

For Approval and Signature:

Hon'ble MR.JUSTICE D.A.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the Civil Judge? : NO

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P K SHAH

Versus

STATE OF GUJARAT  
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Appearance:

MR RN SHAH for Petitioner

MR UMESH TRIVEDI, AGP.for Respondent No. 1  
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CORAM : MR.JUSTICE D.A.MEHTA

Date of decision: 16/11/2000

ORAL JUDGEMENT

#. When the matter was called out for final hearing, the learned Assistant Government Pleader Mr.Umesh Trivedi tendered the affidavit-in-reply dated 01.04.1997 sworn by one Pradipkumar Janakray Jhala, Director, Economics &

Statistics, Gandhinagar which is taken on record. The petitioner had joined the service in the Bureau of Economics & Statistics, Government of Bombay as Statistical Officer on 12.09.1957. On bifurcation of the then Bombay State, the petitioner was transferred to the post of Statistical Assistant with the State of Gujarat. At that point of time, there were no rules providing for passing the Higher Standard Examination to become eligible for further promotion in Class-II cadre. However, on 02.04.1973, a notification was issued by the General Administration Department, Gandhinagar providing for passing of Departmental Examination (Higher Standard Examination) for becoming eligible for promotion to higher post. Thereafter, on 16.06.1979, the circular was issued by the Government providing in all circumstances Research Assistants are eligible to be promoted to the higher post by getting exemption after passing Higher Standard Departmental Examination.

#. On 07.12.1994 the Government published a list showing 14 persons in the common cadre of Research Assistant who were temporarily promoted and posted to Gujarat Statistical Service, Class II cadre with effect from the date of taking over that post. The petitioner was notified at Sr.No.3 in the said list. The 2nd respondent by his order dated 11.10.1974 issued order promoting petitioner to the post of Statistical Assistant, Class-II, from the post of Research Assistant and pursuant thereto he was posted at Palanpur. As the petitioner was not willing to join duty at Palanpur, by application dated 21.10.1974 the 2nd respondent was requested to promote and post the petitioner at either of the two posts available at Ahmedabad and it was further stated in the said application that if the said request was not acceptable the promotion granted to the petitioner may be cancelled for one year. Accordingly, as per the said application, the 2nd respondent cancelled the order of promotion on 10.03.1975.

#. On 19.07.1977, the General Administration Department of the Government of Gujarat issued a circular whereby the applications from Research Assistants were invited in relation to those who were eligible for exemption from passing the Higher Standard Examination for the promotional post in class-II cadre. Accordingly, the petitioner requested for exemption from passing the Higher Standard Examination and claimed promotion. On 26.08.1977, the order was issued promoting the petitioner in class-II cadre in District Panchayat, Gandhinagar and since then the petitioner worked on the said post. However, the petitioner was not given any reply regarding

his claim for exemption. Thereafter, by letter dated 06.08.1979, the Deputy Secretary, General Administration Department informed the petitioner that his request for exemption was not being granted and therefore on 07.07.1980, the respondent no.1 passed the order reverting the petitioner to the post of Research Assistant from the post of Gujarat Statistical Service, class II post.

#. The petitioner had challenged the aforesaid order of reversion by way of Special Civil Application No. 1874 of 1980 before this Court seeking appropriate writ, direction or order for quashing and setting aside the order dated 06.08.1979 refusing to grant exemption as well as the order of reversion dated 07.07.1980 and consequently the orders passed on 08.07.1980 and 09.07.1980 by the respondents no. 2 and 3 respectively. The petitioner was granted ad-interim relief with regard to stay of reversion order.

#. On 12.11.1990 the Special Civil Application No. 1874 of 1980 came up for hearing before the Court (Coram: G.T.Nanavati, J) and in view of the fact that the Special Civil Application which was filed on 14.07.1980 was taken up in November, 1990 and in the interregnum on 04.08.1991, the petitioner had already passed the Higher Standard Departmental Examination, it was observed thus by the Court "as the petitioner has already been appointed regularly to the post of Gujarat Statistical Service Class-II, the relief which the petitioner has sought in the present petition is not required to be granted and in that sense, the present petition has become infructuous. The only direction which is now required to be given is with respect to the period between 14.7.1980 and the date of declaration of the result of the said examination because it is that date with reference to which, he can be said to have been appointed regularly on that post. As the petitioner has continuously remained on that post, the Government is directed to regularise the same. Subject to this direction, this petition is dismissed as it has become infructuous. Rule is discharged with no order as to costs. Copy of the Notification dated 4th August, 1981 is taken on record of this case."

#. Accordingly, the respondent no.1 by order dated 12.11.1991 regularised the service of the petitioner for the interregnum period i.e. 07.07.1980 to 21.07.1981.

#. In view of the fact that the petitioner had been considered for the purpose of seniority with effect from

04.08.1981 i.e. the date on which he cleared the Higher Standard Examination and not for the intervening period viz. 07.07.1980 to 21.07.1981, the petitioner has preferred this petition under Articles 14 and 226 of the Constitution of India seeking direction that his seniority should be considered with effect from 07.07.1980 without any break in light of the direction of this Court in Special Civil Application No.1874 of 1980.

#. Having heard both the sides I feel that no case is made out by the petitioner for claiming seniority for the period 07.07.1980 to 21.07.1981, especially in view of the fact that the petitioner had cleared the Higher Standard Examination only on 04.08.1981 and thus become eligible for the promotional post to class-II with effect from the said date. The direction of this Court in Special Civil Application No. 1874 of 1980 on which the reliance has been placed by the petitioner does not advance the case of the petitioner and there cannot be a right to mean that he should be granted promotional post by ignoring the fact that he had not cleared the necessary examination and the operative portion of the judgment on which great emphasis has been laid that the Government is directed to regularise the service should not be read to mean that the seniority should be counted for the said period.

#. In view of the foregoing reasons, the order dated 12.11.1991 passed by the respondent no.1 and consequential order dated 18.12.1991 passed by the respondent no.2 being Annexure "E" collectively are confirmed and the rule is discharged with no order as to costs.

(D.A.Mehta, J)

m.m.bhatt